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85-1347

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

GEORGE F. RITCHIE,
Respondent

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SUPREME COURT, U.S.

BRIEF IN OPPOSITION TO PETITION FOR
A WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER THE PETITION SHOULD BE DENIED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION?
- II. WHETHER THE SUPREME COURT OF PENNSYLVANIA HAS CORRECTLY CONSTRUED THE APPLICATION OF THE CONFRONTATION AND COMPULSORY PROCESS CLAUSES OF THE SIXTH AMENDMENT TO THAT STATE'S LIMITED CONFIDENTIALITY STATUTE IN QUESTION?

COUNTER STATEMENT OF THE CASE

In so far as the Statement of the Case submitted by the petitioner accurately reflects selected portions of the procedural and factual histories of the case, the respondent, George F. Ritchie, would agree, but would contest the legal interpretation petitioner espouses for the opinions rendered in this case by the Superior Court of Pennsylvania, Commonwealth v. Ritchie, 324 Pa. Super. 557, 472 A.2d 220 (1984) (Petitioner's Appendix B) and the Supreme Court of Pennsylvania, Commonwealth v. Ritchie, ___ Pa. ___, 502 A.2d 148 (1985) (Petitioner's Appendix A). At no time did the highest court of Pennsylvania declare the state confidentiality statute unconstitutional nor did it deny to Mr. Ritchie his claim of compulsory process and right of confrontation under the Sixth Amendment. Instead, the Supreme Court of Pennsylvania construed the state statute in such a manner as to pass constitutional muster, and in doing so, stated the following in passing:

Fortunately, we are not required here to find the present statute unconstitutional. The General Assembly has properly excepted courts of competent jurisdiction and has clearly recognized that material in the child's file cannot be denied them. Since the use of that which is within the jurisdiction of the court must conform to the fundamental law of the land, the defendant's entitlement to them is therefore to be determined by those Sixth Amendment principles heretofore considered. (Opinion 11a-12a, Petitioner's Appendix A.)

Additionally, the respondent submits the following facts of record are essential for understanding the case: The prosecution concededly focused upon the events of June 11, 1979,

for bringing the instant criminal charges against Mr. Ritchie. However, the prosecutrix testified during the course of the trial that incidents like the one that allegedly occurred on June 11, 1979, had been occurring three to four times a week for about four years. (T.T. 35)¹. She further admitted that a prior investigation by CWS² personnel had occurred in September of 1978 (T.T. 90-92, 125, 245) and no criminal charges had ensued from that investigation.

In balancing the competing interests here, the Supreme Court of Pennsylvania agreed ". . . that it would be absurd to read the statute as providing that the records be made available to a court of competent jurisdiction, while denying any use of them to the litigants in a criminal case before such courts." (Opinion 12a, Petitioner's Appendix A). Accordingly, the Supreme Court of Pennsylvania construed the state's limited confidentiality statute as requiring that a criminal defendant, through counsel, be granted access to the CWS files of the prosecutrix in order to effectively confront or cross-examine that witness.

1. The designation "T.T." denotes the applicable page of the transcript of the notes of testimony taken during the trial, which commenced November 7, 1979.
2. The designation "CWS" refers to the Child Welfare Service, which was the agency in Allegheny County charged with the responsibility of monitoring and investigating reports of suspected child abuse.

SUMMARY OF THE ARGUMENT

The petition for a writ of certiorari to the Supreme Court of Pennsylvania must be dismissed for want of a substantial federal question. The scope of a state statute conferring limited confidentiality upon child welfare agency files in a criminal trial is properly a matter within the exclusive responsibility of the highest court of that state under the circumstances of the case. Where the state statute in question confers access to such material upon a court of competent jurisdiction, the highest court of the state must be the final authority on how the material may be used. When that decision rests firmly upon existing authority, no substantial federal question exists.

REASONS FOR DENYING THE WRIT

I. THE PETITION SHOULD BE DENIED FOR WANT OF
A SUBSTANTIAL FEDERAL QUESTION.

The scope of a state statute conferring limited
confidentiality³ upon child welfare agency files is properly a

3. At the time of trial, Section 2215(a) provided:

Confidentiality of Records. (a) Except as provided in
section 14, reports made pursuant to this act including
but not limited to report summaries of child abuse made
pursuant to section 6(b) and written reports made pursuant
to section 6(c) as well as any other information obtained,
reports written or photographs or x-rays taken concerning
alleged instances of child abuse in the possession of the
department, a county public child welfare agency or a
child protective service shall be confidential and shall
only be made available to :

(1) A duly authorized official of a child protective
service in the course of his official duties.

(2) A physician examining or treating a child or the
director or a person specifically designated in writing by
such director of any hospital or other medical institution
where a child is being treated, where the physicians or the
director or his designee suspect the child of being an abused
child.

(3) A guardian ad litem for the child.

(4) A duly authorized official of the department in
accordance with department regulations or in accordance with
the conduct of a performance audit as authorized by section
20.

(5) A court of competent jurisdiction pursuant to a court
order.

Act of Nov. 26, 1975, P.L. 438, No. 124 §15, 11 P.S. §2215.

The law has subsequently been amended, and now provides for
an expanded class of officials and groups to whom the reports
may be made available, including the attorney general, county
commissioners, and law enforcement officials. See generally,
11 P.S. §2215(a). - 5 -

matter within the sound discretion of the highest court of that
state. This Honorable Court has stated many times in many ways
that the construction of state laws is the exclusive
responsibility of the state courts, Speiser v. Randall, 357 U.S.
513 (1958) and that the Supreme Court must accept the state
court's construction of a state statute. Cramp v. Board of
Public Instruction of Orange County, Florida, 368 U.S. 278
(1961). Of course, the corollary to this principle is that a
State may not impose greater restrictions as a matter of federal
constitutional law, when this Court has specifically refrained
from imposing them. Fare v. Michael C., 442 U.S. 707 (1979);
North Carolina v. Butler, 441 U.S. 369 (1979); Oregon v. Haas,
420 U.S. 714 (1975). However, this exception has no application
to the present case.

The Supreme Court of Pennsylvania has construed a state
statute in light of existing federal authority and has not
expanded federal constitutional law. In construing the statute,
the Court explicitly applied the statutory rule of construction
"[t]hat the General Assembly does not intend to violate the
Constitution of the United States or of this Commonwealth." 1
Pa.C.S. §1922(3). In doing so, the Court found "the Child
Protective Services Law was enacted to identify and protect
children suffering from abuse and to provide rehabilitative
services to such children and their families." (Opinion at 6a,
Petitioner's Appendix A). The legislative purpose was ". . .
clearly to create an agency, not only to investigate allegations
of child abuse, but to provide care, shelter, and erase where

possible the cruel stains upon their innocence." (Opinion at 7a, Petitioner's Appendix A). To accomplish the objective, the statute provides for confidentiality and, as well, for exceptions to the confidentiality imposed. Id. One of the answered exceptions is a court of competent jurisdiction.

The petitioner complains the Supreme court of Pennsylvania in upholding the Sixth Amendment challenge to the limited confidentiality statute "seriously undermined the announced purpose of the statute". (Petition at 17). Without further empirical support for either side, the argument is moot. Furthermore, since one of the exceptions to the legislatively created confidentiality claim is a court of competent jurisdiction, the highest court of the State must be the final authority on how it may be used. This Court is bound to accept the interpretation of state law by the highest court of the state. Hortonville Saint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482 (1976). This Court has held that it is not its function to direct the state courts how to manage their affairs, but only to make clear federal constitutional requirements. Argersinger v. Hamlin, 407 U.S. 25 (1972). The state courts have final authority to interpret, and where they see fit, to reinterpret their own legislation. Garner v. Louisiana, 268 U.S. 157 (1961).

Finally, the petitioner claims the decision is in conflict with decisions in two other jurisdictions. See, Camitsch v. Risley, 705 F.2d 351 (9th Cir. 1983) and State v. Storlazzi, 191 Comm. 453, 464 A.2d 829 (1983). Neither decision

deals with reports compiled during the time that the events leading to the criminal prosecution occurred and neither decision construes a statute granting limited confidentiality. In Camitsch, supra, the Court defined the limits of access to juvenile Court files first decided by this Court in Davis v. Alaska, 415 U.S. 308 (1974). In denying access, the Court in Camitsch, supra, found the fact that an adjudication of delinquency and the probationary status of the witness were actually placed before the jury was both persuasive and dispositive of the issue. No further information of relevance could be gleaned from the juvenile court file of the witness. In contrast, the complainant in case sub judice testified she had received the benefit of an investigation by CWS during the four year period she claimed the events transpired. The relevance of such material is apparent on its face.

Also in contrast, the Court in Storlazzi, supra, faced a request for access to certain psychiatric, psychological and social agency files compiled on the complainant after her relationship with the defendant had ended and before trial. The defense requested access to the files in order to establish the competency of the witness to testify at trial. The court found nothing in the files to disclose material especially probative of the ability of the witness to comprehend, know and correctly relate the truth. Id. Unlike the present case, no other basis for the relevancy of the challenged material was declared or apparent on the record. Therefore, the only two cases cited by the petitioner as presenting a conflict with the case sub judice

fail to present any identity of the issues so as to merit a review by this Court.

For those reasons, this Court must dismiss the petition for want of a substantial federal question. Wetzel v. Ohio, 371 U.S. 62 (1962).

II. THE SUPREME COURT OF PENNSYLVANIA HAS CORRECTLY CONSTRUED THE APPLICATION OF THE CONFRONTATION AND COMPULSORY PROCESS CLAUSES OF THE SIXTH AMENDMENT TO THAT STATE'S LIMITED CONFIDENTIALITY STATUTE IN QUESTION.

The petitioner seeks to have this Honorable Court declare as a matter of constitutional principle the scope of access to be accorded defense counsel in a criminal case to material presumably protected by a state's limited confidentiality statute, when that material comes under a Sixth Amendment challenge for compulsory process and right of confrontation. Since the petitioner has failed to cite any persuasive decisional authority for its position, the petition must be dismissed.

The rights of compulsory process and to confrontation of witnesses is made applicable to the states by the due process clause of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400 (1965). The due process clause of the Fourteenth Amendment also requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or punishment. California v. Trombetta, 467 U.S. 479 (1984); United States v. Agurs, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83 (1963).

The purpose behind the confrontation clause is to provide an accused with an effective means of challenging the evidence against him by testing the recollection and probing the conscience of the adverse witness. Ohio v. Roberts, 448 U.S. 56 (1980). As this Court stated in Alford v. United States, 282

U.S. 687, 692 (1931) and again in South v. Illinois, 390 U.S. 129 (1968):

"It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them . . . To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial." *Id.* at 132.

Claims of confidentiality or privilege are necessarily suspect creatures in such an arena. "Disclosure, rather than suppression of relevant materials ordinarily promotes the proper administration of criminal justice." Dennis v. United States, 384 U.S. 855, 870 (1966). Such claims necessarily carry with them the possibility of infringing upon the truth-seeking process. (Opinion at 9a, Petitioner's Appendix A). As the Court observed of such privileges, "whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." United States v. Nixon, 418 U.S. 683, 710 (1974). There, the Court held that a claim of executive privilege, itself of constitutional dimension, may not prevail as against the need for disclosure.

The Court has upheld the need for full disclosure of relevant evidence as against state claims of privilege or

confidentiality as well. In Smith v. Illinois, supra, the Court held that, notwithstanding a contrary state evidentiary law, the confrontation clause guarantees a defendant the right to cross-examine a witness as to his real name and address. In Washington v. Texas, 388 U.S. 14 (1967), the Court held the compulsory process clause requires, as against a contrary state provision, that a defendant be able to present the favorable testimony of a co-defendant. In Davis v. Alaska, 415 U.S. 308 (1974), the Court held that the right of confrontation was superior to a state law concerning the confidentiality of juvenile proceedings.

In contrast, the case sub judice presents a state statute of limited confidentiality allowing access by a court of competent jurisdiction. Yet, it would be absurd to suggest the highest court of that State may not determine how the same material may be used. This assertion has no place in the truth-seeking process. United States v. Nixon, supra. Accordingly, no persuasive authority exists for the argument advanced by the petitioner.

CONCLUSION

For these reasons, this Honorable Court should dismiss the petition for writ of certiorari for want of a substantial federal question or, alternatively, for the lack of relevant authority to support the proposition of law advanced by the petitioner.

Respectfully submitted,

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